

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)	
)	
vs.)	CAUSE NO. 3:03-CR-58
)	
WILLIAM HENRY SMITH III)	

OPINION AND ORDER

On April 23, 2008, the court denied the defendant's motion to correct error under FED. R. CRIM. P. 35(a), finding that it had no authority to apply amendments to U.S.S.G. § 4A1.2 retroactively and that the time for requesting a sentence modification under Rule 35(a) had expired. [Doc. No. 116]. Mr. Smith has filed a notice of appeal and a motion for leave to appeal *in forma pauperis*.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person may be permitted to proceed on appeal *in forma pauperis* unless the court "certifies that the appeal is not taken in good faith." In other words, the court must determine "that a reasonable person could suppose that the appeal has some merit." Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because no reasonable person could find that Mr. Smith's appeal has any merit, the court concludes that the appeal is not taken in good faith and that Mr. Smith's request for pauper status must be denied.

Accordingly, the court DENIES the motion to proceed *in forma pauperis* [Doc. No. 121].

SO ORDERED.

ENTERED: May 21, 2008

/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court